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AMENDED IN SENATE JANUARY 4, 2012

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AMENDED IN SENATE MAY 10, 2011

AMENDED IN SENATE APRIL 12, 2011

SENATE BILL

No. 708

Introduced by Senator Corbett

(Principal coauthor: Assembly Member Beall)

(Coauthor: Senator DeSaulnier)

(Coauthor: Assembly Member Bonilla)

February 18, 2011

An act to amend Sections 2923.5, 2923.6, 2924.8, and 2929.3 of the Civil Code, and to amend Section 1161b of the Code of Civil Procedure, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 708, as amended, Corbett. Residential mortgage loans: foreclosure procedures.

Upon a breach of the obligation of a mortgage or transfer of an interest in property, existing law requires the trustee, mortgagee, or beneficiary to comply with certain procedures, including recording a notice of default, and mailing the notice of default to the mortgagor or trustor. Existing law, until January 1, 2013, imposes additional requirements on mortgagees, trustees, beneficiaries, and authorized agents for residential mortgage loans made from January 1, 2003, to December 31, 2007, inclusive, including prohibiting the filing of a notice of default on a mortgage or deed of trust secured by owner-occupied real property

until 30 days after the borrower is contacted or 30 days after satisfying due diligence requirements to contact the borrower, as specified. Existing law, until January 1, 2013, gives a tenant or subtenant in possession of a rental housing unit, at the time the property is sold in foreclosure, 60 days to remove himself or herself from the property. Existing law requires a trustee or authorized representative to post a notice on the property to be sold that contains specified information relating to the rights of the resident of the property, and makes it a crime to tear down the notice within 72 hours of the time the notice is posted.

This bill would extend the operation of all of the provisions specified above to January 1, 2018. *The bill would also revise the notice relating to the rights of the resident.*

By extending the operative period of a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2923.5 of the Civil Code is amended to
2 read:
3 2923.5. (a) (1) A mortgagee, trustee, beneficiary, or authorized
4 agent may not file a notice of default pursuant to Section 2924
5 until 30 days after initial contact is made as required by paragraph
6 (2) or 30 days after satisfying the due diligence requirements as
7 described in subdivision (g).
8 (2) A mortgagee, beneficiary, or authorized agent shall contact
9 the borrower in person or by telephone in order to assess the
10 borrower's financial situation and explore options for the borrower
11 to avoid foreclosure. During the initial contact, the mortgagee,
12 beneficiary, or authorized agent shall advise the borrower that he
13 or she has the right to request a subsequent meeting and, if
14 requested, the mortgagee, beneficiary, or authorized agent shall
15 schedule the meeting to occur within 14 days. The assessment of
16 the borrower's financial situation and discussion of options may

1 occur during the first contact, or at the subsequent meeting
2 scheduled for that purpose. In either case, the borrower shall be
3 provided the toll-free telephone number made available by the
4 United States Department of Housing and Urban Development
5 (HUD) to find a HUD-certified housing counseling agency. Any
6 meeting may occur telephonically.

7 (b) A notice of default filed pursuant to Section 2924 shall
8 include a declaration that the mortgagee, beneficiary, or authorized
9 agent has contacted the borrower, has tried with due diligence to
10 contact the borrower as required by this section, or that no contact
11 was required pursuant to subdivision (h).

12 (c) If a mortgagee, trustee, beneficiary, or authorized agent had
13 already filed the notice of default prior to the enactment of this
14 section and did not subsequently file a notice of rescission, then
15 the mortgagee, trustee, beneficiary, or authorized agent shall, as
16 part of the notice of sale filed pursuant to Section 2924f, include
17 a declaration that either:

18 (1) States that the borrower was contacted to assess the
19 borrower's financial situation and to explore options for the
20 borrower to avoid foreclosure.

21 (2) Lists the efforts made, if any, to contact the borrower in the
22 event no contact was made.

23 (d) A mortgagee's, beneficiary's, or authorized agent's loss
24 mitigation personnel may participate by telephone during any
25 contact required by this section.

26 (e) For purposes of this section, a "borrower" shall include a
27 mortgagor or trustor.

28 (f) A borrower may designate, with consent given in writing, a
29 HUD-certified housing counseling agency, attorney, or other
30 advisor to discuss with the mortgagee, beneficiary, or authorized
31 agent, on the borrower's behalf, the borrower's financial situation
32 and options for the borrower to avoid foreclosure. That contact
33 made at the direction of the borrower shall satisfy the contact
34 requirements of paragraph (2) of subdivision (a). Any loan
35 modification or workout plan offered at the meeting by the
36 mortgagee, beneficiary, or authorized agent is subject to approval
37 by the borrower.

38 (g) A notice of default may be filed pursuant to Section 2924
39 when a mortgagee, beneficiary, or authorized agent has not
40 contacted a borrower as required by paragraph (2) of subdivision

(a) provided that the failure to contact the borrower occurred despite the due diligence of the mortgagee, beneficiary, or authorized agent. For purposes of this section, “due diligence” shall require and mean all of the following:

(1) A mortgagee, beneficiary, or authorized agent shall first attempt to contact a borrower by sending a first-class letter that includes the toll-free telephone number made available by HUD to find a HUD-certified housing counseling agency.

(2) (A) After the letter has been sent, the mortgagee, beneficiary, or authorized agent shall attempt to contact the borrower by telephone at least three times at different hours and on different days. Telephone calls shall be made to the primary telephone number on file.

(B) A mortgagee, beneficiary, or authorized agent may attempt to contact a borrower using an automated system to dial borrowers, provided that, if the telephone call is answered, the call is connected to a live representative of the mortgagee, beneficiary, or authorized agent.

(C) A mortgagee, beneficiary, or authorized agent satisfies the telephone contact requirements of this paragraph if it determines, after attempting contact pursuant to this paragraph, that the borrower’s primary telephone number and secondary telephone number or numbers on file, if any, have been disconnected.

(3) If the borrower does not respond within two weeks after the telephone call requirements of paragraph (2) have been satisfied, the mortgagee, beneficiary, or authorized agent shall then send a certified letter, with return receipt requested.

(4) The mortgagee, beneficiary, or authorized agent shall provide a means for the borrower to contact it in a timely manner, including a toll-free telephone number that will provide access to a live representative during business hours.

(5) The mortgagee, beneficiary, or authorized agent has posted a prominent link on the homepage of its Internet Web site, if any, to the following information:

(A) Options that may be available to borrowers who are unable to afford their mortgage payments and who wish to avoid foreclosure, and instructions to borrowers advising them on steps to take to explore those options.

1 (B) A list of financial documents borrowers should collect and
2 be prepared to present to the mortgagee, beneficiary, or authorized
3 agent when discussing options for avoiding foreclosure.

4 (C) A toll-free telephone number for borrowers who wish to
5 discuss options for avoiding foreclosure with their mortgagee,
6 beneficiary, or authorized agent.

7 (D) The toll-free telephone number made available by HUD to
8 find a HUD-certified housing counseling agency.

9 (h) Subdivisions (a), (c), and (g) shall not apply if any of the
10 following occurs:

11 (1) The borrower has surrendered the property as evidenced by
12 either a letter confirming the surrender or delivery of the keys to
13 the property to the mortgagee, trustee, beneficiary, or authorized
14 agent.

15 (2) The borrower has contracted with an organization, person,
16 or entity whose primary business is advising people who have
17 decided to leave their homes on how to extend the foreclosure
18 process and avoid their contractual obligations to mortgagees or
19 beneficiaries.

20 (3) A case has been filed by the borrower under Chapter 7, 11,
21 12, or 13 of Title 11 of the United States Code and the bankruptcy
22 court has not entered an order closing or dismissing the bankruptcy
23 case, or granting relief from a stay of foreclosure.

24 (i) This section shall apply only to mortgages or deeds of trust
25 recorded from January 1, 2003, to December 31, 2007, inclusive,
26 that are secured by owner-occupied residential real property
27 containing no more than four dwelling units. For purposes of this
28 subdivision, “owner-occupied” means that the residence is the
29 principal residence of the borrower as indicated to the lender in
30 loan documents.

31 (j) This section shall remain in effect only until January 1, 2018,
32 and as of that date is repealed, unless a later enacted statute, that
33 is enacted before January 1, 2018, deletes or extends that date.

34 SEC. 2. Section 2923.6 of the Civil Code is amended to read:

35 2923.6. (a) The Legislature finds and declares that any duty
36 servicers may have to maximize net present value under their
37 pooling and servicing agreements is owed to all parties in a loan
38 pool, or to all investors under a pooling and servicing agreement,
39 not to any particular party in the loan pool or investor under a
40 ~~pooling~~ pooling and servicing agreement, and that a servicer acts

1 in the best interests of all parties to the loan pool or investors in
2 the pooling and servicing agreement if it agrees to or implements
3 a loan modification or workout plan for which both of the following
4 apply:

5 (1) The loan is in payment default, or payment default is
6 reasonably foreseeable.

7 (2) Anticipated recovery under the loan modification or workout
8 plan exceeds the anticipated recovery through foreclosure on a net
9 present value basis.

10 (b) It is the intent of the Legislature that the mortgagee,
11 beneficiary, or authorized agent offer the borrower a loan
12 modification or workout plan if such a modification or plan is
13 consistent with its contractual or other authority.

14 (c) This section shall remain in effect only until January 1, 2018,
15 and as of that date is repealed, unless a later enacted statute, that
16 is enacted before January 1, 2018, deletes or extends that date.

17 SEC. 3. Section 2924.8 of the Civil Code is amended to read:

18 2924.8. (a) Upon posting a notice of sale pursuant to Section
19 2924f, a trustee or authorized agent shall also post the following
20 notice, in the manner required for posting the notice of sale on the
21 property to be sold, and a mortgagee, trustee, beneficiary, or
22 authorized agent, concurrently with the mailing of the notice of
23 sale pursuant to Section 2924b, shall send by first-class mail in an
24 envelope addressed to the “Resident of property subject to
25 foreclosure sale” the following notice in English and the languages
26 described in Section 1632: ~~“Foreclosure process has begun on this~~
27 ~~property, which may affect your right to continue to live in this~~
28 ~~property. Twenty days or more after the date of this notice, this~~
29 ~~property may be sold at foreclosure. If you are renting this property,~~
30 ~~the new property owner may either give you a new lease or rental~~
31 ~~agreement or provide you with a 60-day eviction notice. However,~~
32 ~~other laws may prohibit an eviction in this circumstance or provide~~
33 ~~you with a longer notice before eviction. You may wish to contact~~
34 ~~a lawyer or your local legal aid or housing counseling agency to~~
35 ~~discuss any rights you may have.”~~
36

37 *“You are not required to move at this time. However, the*
38 *foreclosure process has begun on this property, which may affect*
39 *your right to continue to live in this property in the future. Twenty*
40 *days or more after the date of this notice, this property may be*

1 *sold at foreclosure. If you are renting this property, your tenancy*
 2 *may continue after the foreclosure sale. In order for the new owner*
 3 *to evict you, the new owner must provide you with at least 60 days*
 4 *written eviction notice or 90 days if required by any other provision*
 5 *of state or federal law. However, some laws may prohibit an*
 6 *eviction. You should contact a lawyer or housing counseling agency*
 7 *to discuss any rights you may have. If you do not know an attorney,*
 8 *you may want to call an attorney referral service. If you cannot*
 9 *afford an attorney, you may be eligible for free legal services from*
 10 *a nonprofit legal services program.”*

11
 12 (b) It shall be an infraction to tear down the notice described in
 13 subdivision (a) within 72 hours of posting. Violators shall be
 14 subject to a fine of one hundred dollars (\$100).

15 (c) A state government entity shall make available translations
 16 of the notice described in subdivision (a) which may be used by a
 17 mortgagee, trustee, beneficiary, or authorized agent to satisfy the
 18 requirements of this section.

19 (d) This section shall only apply to loans secured by residential
 20 real property; and if the billing address for the mortgage note is
 21 different than the property address.

22 (e) This section shall remain in effect only until January 1, 2018,
 23 and as of that date is repealed, unless a later enacted statute, that
 24 is enacted before January 1, 2018, deletes or extends that date.

25 SEC. 4. Section 2929.3 of the Civil Code is amended to read:

26 2929.3. (a) (1) A legal owner shall maintain vacant residential
 27 property purchased by that owner at a foreclosure sale, or acquired
 28 by that owner through foreclosure under a mortgage or deed of
 29 trust. A governmental entity may impose a civil fine of up to one
 30 thousand dollars (\$1,000) per day for a violation. If the
 31 governmental entity chooses to impose a fine pursuant to this
 32 section, it shall give notice of the alleged violation, including a
 33 description of the conditions that gave rise to the allegation, and
 34 notice of the entity’s intent to assess a civil fine if action to correct
 35 the violation is not commenced within a period of not less than 14
 36 days and completed within a period of not less than 30 days. The
 37 notice shall be mailed to the address provided in the deed or other
 38 instrument as specified in subdivision (a) of Section 27321.5 of
 39 the Government Code, or, if none, to the return address provided
 40 on the deed or other instrument.

(2) The governmental entity shall provide a period of not less than 30 days for the legal owner to remedy the violation prior to imposing a civil fine and shall allow for a hearing and opportunity to contest any fine imposed. In determining the amount of the fine, the governmental entity shall take into consideration any timely and good faith efforts by the legal owner to remedy the violation. The maximum civil fine authorized by this section is one thousand dollars (\$1,000) for each day that the owner fails to maintain the property, commencing on the day following the expiration of the period to remedy the violation established by the governmental entity.

(3) Subject to the provisions of this section, a governmental entity may establish different compliance periods for different conditions on the same property in the notice of alleged violation mailed to the legal owner.

(b) For purposes of this section, “failure to maintain” means failure to care for the exterior of the property, including, but not limited to, permitting excessive foliage growth that diminishes the value of surrounding properties, failing to take action to prevent trespassers or squatters from remaining on the property, or failing to take action to prevent mosquito larvae from growing in standing water or other conditions that create a public nuisance.

(c) Notwithstanding subdivisions (a) and (b), a governmental entity may provide less than 30 days’ notice to remedy a condition before imposing a civil fine if the entity determines that a specific condition of the property threatens public health or safety and provided that notice of that determination and time for compliance is given.

(d) Fines and penalties collected pursuant to this section shall be directed to local nuisance abatement programs.

(e) A governmental entity may not impose fines on a legal owner under both this section and a local ordinance.

(f) These provisions shall not preempt any local ordinance.

(g) This section shall only apply to residential real property.

(h) The rights and remedies provided in this section are cumulative and in addition to any other rights and remedies provided by law.

(i) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

1 SEC. 5. Section 1161b of the Code of Civil Procedure is
2 amended to read:

3 1161b. (a) Notwithstanding Section 1161a, a tenant or
4 subtenant in possession of a rental housing unit at the time the
5 property is sold in foreclosure shall be given 60 days' written
6 notice to quit pursuant to Section 1162 before the tenant or
7 subtenant may be removed from the property as prescribed in this
8 chapter.

9 (b) This section shall not apply if any party to the note remains
10 in the property as a tenant, subtenant, or occupant.

11 (c) This section shall remain in effect only until January 1, 2018,
12 and as of that date is repealed, unless a later enacted statute, that
13 is enacted before January 1, 2018, deletes or extends that date.

14 SEC. 6. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 the only costs that may be incurred by a local agency or school
17 district will be incurred because this act creates a new crime or
18 infraction, eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section 17556 of
20 the Government Code, or changes the definition of a crime within
21 the meaning of Section 6 of Article XIII B of the California
22 Constitution.